

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

-VS-

MICHAEL VALENTEEN,

Defendant

NO. 3:CR-92-313

(Judge Kosik)

MEMORANDUM AND ORDER

_____ This matter is before the court on movant’s “Motion Under Federal Rules of Criminal Procedure 60(b).” In this motion, movant attacks a February 2, 2006 decision of the United States Court of Appeals for the Third Circuit denying him permission to file a successive Section 2255 motion as an “erroneous decision.”

First, we must note that there is no Fed.R.Crim.P. 60(b) which would grant him any relief. Regardless, he asks us to reverse a Third Circuit decision and grant him an evidentiary hearing in which he would contend he was actually innocent on Count 5 of the indictment charging firearms related offenses. Count 5 deals with the possession of a 9mm hand gun for which movant received a 235-month sentence as an armed career criminal. Actually, movant received the same sentence on Counts 1 and 4 for possessing a stolen 30-30 rifle and ammunition which he was prohibited from possessing as a result of his prior felony conviction. Even if granted the relief he seeks, his sentence would not change.

The government's response reflects the history of this case. After his conviction and sentence, he appealed. The conviction was affirmed. A petition for writ of certiorari was denied. He then sought a tape recording that was used during the trial. It was denied. An appeal of the denial was affirmed. This was followed by a motion under 28 U.S.C. §2255.

This was denied, appealed and affirmed. Next, movant filed a motion to modify his sentence. It was denied. A reconsideration was denied. An appeal affirmed the denial.

Movant then filed a motion for new trial based on newly discovered evidence. the motion was denied, appealed and affirmed. In an attempt to start all over again, movant twice sought permission from the Third Circuit appellate court to file a second or successive motion under §2255. Both efforts were denied.

The present motion is the latest of movant's attempts to seek a review of his case. For the reasons already stated, the motion is DENIED.

SO ORDERED.

s/Edwin M. Kosik
United States District Judge

Date: March 24, 2006